

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LESTER M. DEAN, JR.,

Plaintiff,

Civil Action

v.

Case No. 04-2100-JWL-DJW

**EDWARD C. GILLETTE,
et al.,**

Defendants.

ORDER

This matter comes before the Court on Defendant Gillette's Motion to Strike (doc. 6) and Defendant Monslow's Motion to Strike (doc. 11). In their respective motions, Defendants Gillette and Monslow move pursuant to Fed. R. Civ. P. 12(f) to strike certain language contained in paragraph 9 of Plaintiff's First Amended Complaint, alleging that "Defendants have engaged in unethical conduct in attempts to collect alleged debt from Plaintiff that is not owed or collectible." Defendants contend that his language should be stricken because it is immaterial and scandalous. They also argue that this allegation, to the extent it refers to unethical conduct, is entirely collateral and immaterial to Plaintiff's claims that Defendants violated the Fair Debt Collection Practices Act ("FDCPA"). Plaintiff has filed his response opposing both motions to strike.

Federal Rule of Civil Procedure 12(f) provides that "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

Because striking a portion of a pleading is a drastic remedy and because a motion to strike may often be made as a dilatory tactic, motions to strike under Rule 12(f) generally are disfavored.¹ While motions to strike are generally disfavored, the decision to grant a motion to strike is within the discretion of the court.²

The court will usually deny a motion to strike unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties.³ If the record reveals any doubt as to whether under any contingency a certain matter may raise an issue, the court should deny the motion to strike.⁴

For purposes of ruling on a motion to strike, immaterial matter is defined as that which has no essential or important relationship to the claim for relief, or a statement of unnecessary particulars in connection with that which is material.⁵ Redundancy or immateriality, however, is not enough to trigger the drastic remedy of striking parts of a pleading; the allegation must also be prejudicial to the defendant.⁶ Prejudice occurs when the challenged pleading or allegation confuses the issues or is so lengthy and complex that it places an undue burden on the responding party.⁷

¹*Nwakpuda v. Falley's, Inc.*, 14 F. Supp. 2d 1213, 1215 (D. Kan. 1998) (citing *Resolution Trust Corp. v. Scaletty*, 810 F.Supp. 1505, 1515 (D. Kan.1992)); *Federal Deposit Ins. Corp. v. Niver*, 685 F. Supp. 766, 768 (D. Kan. 1987).

²*Geer v. Cox*, 242 F. Supp. 2d 1009, 1025 (D. Kan. 2003) (citing *Resolution Trust Corp.*, 810 F.Supp. at 1515).

³*Nwakpuda*, 14 F. Supp. 2d at 1215 (citing *Fed. Deposit Ins. Corp.*, 685 F. Supp. at 768).

⁴*Id.*

⁵*Foster v. Pfizer Inc.*, No. Civ. A. 00-1287-JTM, 2000 WL 33170897, at *2 (D. Kan. Dec. 12, 2000); *Miller v. Pfizer, Inc.*, No. Civ.A. 99-2326-KHV, 1999 WL 1063046, at *3 (D. Kan. Nov. 10, 1999).

⁶*Foster*, 2000 WL 33170897, at *2.

⁷ *Id.*

Rule 12(f) also provides that the court may order stricken from any pleading any “scandalous matter.” Allegations should be stricken as scandalous only if they are irrelevant and “degrade defendants’ moral character, contain repulsive language, or detract from the dignity of the court.”⁸ Relevant allegations will be stricken as scandalous only if they satisfy this criteria as well and go into unnecessary detail.⁹

Having reviewed paragraph nine of Plaintiff’s First Amended Complaint and the briefing to the instant Motion, the Court finds that the paragraph in dispute is neither immaterial nor scandalous to a degree that would warrant striking it. While the paragraph does contain unflattering statements regarding Defendants, it is made in the context of Plaintiff’s theory of the case, which Defendants are free to challenge in the course of motions and other pleadings. The Court finds that paragraph 9 of Plaintiff’s First Amended Complaint does not warrant striking on any of the grounds provided in Rule 12(f). Defendant Edward C. Gillette’s Motion to Strike (doc. 6) and Defendant Monslow’s Motion to Strike (doc. 11) are therefore denied.

IT IS THEREFORE ORDERED that Defendant Edward C. Gillette’s Motion to Strike (doc. 6) and Defendant Monslow’s Motion to Strike (doc. 11) are denied.

IT IS SO ORDERED.

Dated in Kansas City, Kansas, this 8th day of June, 2004.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge

⁸*Foster*, 2000 WL 33170897, at *2 (quoting *Sierra Club v. Tri-State Generation & Transmission Ass’n*, 173 F.R.D. 275, 285 (D. Colo. 1997)).

⁹*Sierra Club*, 173 F.R.D. at 285 (citing *Nault’s Auto. Sales, Inc. v. American Honda Motor Co.*, 148 F.R.D. 25, 30 (D.N.H. 1993)).

cc: All counsel